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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW HAMPSHIRE

\* \* \* \* \*  
\*  
UNITED STATES OF AMERICA \*  
\*  
v. \* 18-cr-110-JD  
\* May 8, 2019  
\* 11:05 a.m.  
ZACHARY BENOIT \*  
\*  
\* \* \* \* \*

TRANSCRIPT OF SENTENCING HEARING  
BEFORE THE HONORABLE JOSEPH A. DiCLERICO, JR.

Appearances:

For the Government: Helen W. Fitzgibbon, AUSA  
United States Attorney's Office

For the Defendant: Dorothy E. Graham, Esq.  
Federal Defender's Office

Probation Officer: Theresa Duncan

Court Reporter: Liza W. Dubois, RMR, CRR  
Official Court Reporter  
United States District Court  
55 Pleasant Street  
Concord, New Hampshire 03301  
(603)225-1442

1 P R O C E E D I N G S

2 THE CLERK: The Court has before it for  
3 consideration today a sentencing hearing in criminal  
4 case 18-cr-110-01-JD, United States vs. Zachary Benoit.

5 THE COURT: Good morning.

6 MS. FITZGIBBON: Good morning.

7 MS. GRAHAM: Good morning.

8 THE COURT: Ms. Graham, the Court has a  
9 Presentence Investigation Report before it. Have you  
10 had a chance to review that with your client?

11 MS. GRAHAM: Yes, your Honor.

12 THE COURT: Now, you had several guideline  
13 issues that you would like to take up.

14 MS. GRAHAM: I have, your Honor, and --

15 THE COURT: Let me just interrupt.

16 MS. GRAHAM: Sure.

17 THE COURT: It might save you a little time.

18 As I understand it, your first issue relates  
19 to the use of a computer and as I understand it, the  
20 government doesn't have any objection to making that  
21 adjustment.

22 MS. FITZGIBBON: No objection to that, your  
23 Honor.

24 THE COURT: So the Court will do that.

25 MS. GRAHAM: Thank you.

1 THE COURT: All right.

2 MS. GRAHAM: As to the second objection, your  
3 Honor, which was for the five levels for trading for --  
4 for benefit or for -- in return for other pornography,  
5 in reviewing my client's statement and the transcript,  
6 I'm -- I withdraw my objection because I think that the  
7 evidence supports that by preponderance of the evidence  
8 and I would come back to that in more of a variance  
9 argument in terms of how much of that pornography made  
10 up the -- or what percentage of that actually made up  
11 the collection.

12 So I agree that's more of a variance argument  
13 at this point.

14 THE COURT: All right.

15 So with respect to the guidelines then, the  
16 Court will -- in the report, line 28 or paragraph 28,  
17 the Court will strike the two-level increase.

18 In paragraph 33, the adjusted offense level  
19 becomes 38.

20 In paragraph 37, the total offense level  
21 becomes 35.

22 Do counsel agree with that?

23 MS. GRAHAM: Yes.

24 MS. FITZGIBBON: Yes, your Honor.

25 THE COURT: And then the probation officer

1 will make the necessary changes later on in the report.

2 THE PROBATION OFFICER: Yes, your Honor.

3 THE COURT: So at offense level 35, Criminal  
4 History Category I, that yields a guideline range of 168  
5 to 210 months.

6 Does the government have a recommendation?

7 MS. FITZGIBBON: Yes, your Honor. And if I  
8 may, before --

9 THE COURT: Yes.

10 MS. FITZGIBBON: -- we move on from the PSR --

11 THE COURT: Yes.

12 MS. FITZGIBBON: -- just to be a stickler, it  
13 does not impact the guideline range at all, but I  
14 notified probation and defense counsel yesterday that I  
15 had overlooked -- and I apologize for the lateness --  
16 just an error in number of images in paragraph 15 --

17 THE COURT: Okay.

18 MS. FITZGIBBON: -- of the PSR. The report  
19 actually found that -- once all of the thousands of  
20 images were reviewed, it was found that there were 299  
21 still images and 418 videos identified as known.

22 And, again, this does not impact the guideline  
23 range at all. I just wanted to bring that to the  
24 Court's attention.

25 THE COURT: So what was that?

1 MS. FITZGIBBON: It was 299 images, 418  
2 videos.

3 THE COURT: All right.

4 All right. Did you have any comment on that,  
5 Ms. Graham? I'll give you a moment to digest it.

6 MS. GRAHAM: I -- I think that paragraph 16  
7 discusses the extent of the images and so I -- I don't  
8 think that it really makes any difference to the Court's  
9 analysis.

10 THE COURT: All right.

11 MS. FITZGIBBON: Thank you, your Honor.

12 THE COURT: All right.

13 MS. FITZGIBBON: So, your Honor, with respect  
14 then to the government's recommendation, the government  
15 does recommend a sentence of 168 months. The  
16 government's argument for this is largely set forth in  
17 our sentencing memorandum.

18 As the Court is aware, this was an extensive  
19 collection, an extremely large collection of child  
20 pornography, including some of the worst, most violent  
21 and disturbing images known to law enforcement involving  
22 the horrific abuse of multiple children, including  
23 babies and toddlers.

24 The defendant did not keep these images to  
25 himself, but was involved, as the Court is aware, with

1 sharing and further putting these images out there into  
2 the public and to -- so that he could receive more of  
3 these awful images.

4 For all of the reasons, your Honor, set forth  
5 in our sentencing memorandum, the government feels that  
6 a sentence of 168 is the appropriate sentence in this  
7 case.

8 Thank you.

9 THE COURT: Thank you.

10 Ms. Graham.

11 MS. GRAHAM: Thank you, your Honor.

12 Your Honor, part of my argument, I think, will  
13 incorporate some of the arguments that I will be making  
14 in terms of the conditions of supervised release, so if  
15 I could address that as I'm making my sentencing  
16 argument.

17 THE COURT: Yes.

18 MS. GRAHAM: The defense obtained a highly  
19 respected expert to conduct an evaluation in this case  
20 and Mr. Benoit was extremely forthcoming in that  
21 evaluation.

22 I think that the government and probation have  
23 placed great weight on an encounter that Mr. Benoit had  
24 when he was approximately eight years old. On page 13  
25 of Dr. Guidry's report, she states, quote: His limited

1 prepubertal sexual misconduct with his younger sister  
2 when he was eight does not constitute a sexual contact  
3 offense that would suggest an increased risk for future  
4 contact sexual offense due to the prepubertal nature of  
5 the acts.

6 Dr. Guidry goes on to say, quote: There is no  
7 data to indicate that he has ever approached a child for  
8 sex, has ever engaged in sex with a child as an  
9 adolescent or adult, or that he appears to believe that  
10 children are his emotional and/or social sexual equals.  
11 As such, Dr. Guidry finds that there is limited data to  
12 suggest that Mr. Benoit presents a risk of committing a  
13 contact sexual offense.

14 And, notably, in her conclusion she states:  
15 He presents a relatively low risk for recidivating with  
16 a contact sexual offense as he does not present with  
17 factors consistent with those that would indicate he  
18 presents an elevated risk to commit a sexual contact  
19 offense.

20 And I start off with that information, your  
21 Honor, because the government presents no evidence to  
22 refute that. They've had this evaluation for -- I  
23 believe since September of 2018. They've not presented  
24 their own expert's report or provided expert testimony  
25 to this Court.

1           So, accordingly, I believe that the Court  
2           should give little weight to any opinions that are not  
3           based on an expert's review of Dr. Guidry's evaluation  
4           or the facts in this case.

5           THE COURT: Well, the doctor does qualify that  
6           statement, though, by saying that: I would opine that  
7           his risk for sexual reoffense by virtue of committing an  
8           online sexual offense should be considered elevated if  
9           untreated, but manageable if his psychological  
10          vulnerabilities are adequately addressed in treatment.

11          So the doctor qualifies that.

12          MS. GRAHAM: I think she qualifies the  
13          online --

14          THE COURT: Yes.

15          MS. GRAHAM: -- potential --

16          THE COURT: Right.

17          MS. GRAHAM: -- to recidivate, not --

18          THE COURT: Yes, the online.

19          MS. GRAHAM: Yes. And I agree with that, that  
20          that's what the report says --

21          THE COURT: All right.

22          MS. GRAHAM: -- and I'm just making a  
23          distinction between this was not a hands-on offense, nor  
24          does she suggest in her evaluation that he is a high  
25          risk to commit a hands-on sexual offense. But I do



1 concur with the Court that without treatment, he poses  
2 an elevated risk.

3 But I think that what's important in that  
4 evaluation, and I will further discuss that, is his --  
5 his response to treatment and her opinion that he will  
6 likely be successful with rehabilitation.

7 Specifically as to the sentence, your Honor, I  
8 think my client has had or has lived a relatively  
9 sheltered life. He lived at home until the age of 24  
10 when he moved out to live with his girlfriend and as a  
11 result of this investigation and, of course, his own  
12 actions, he's had no contact with his own child or the  
13 child's mother. The child is in the sole custody of the  
14 child's mother and she will get to decide if or when  
15 Mr. Benoit will have contact with his child.

16 Although Mr. Benoit has not furthered his  
17 education, he's maintained stable employment for most of  
18 his life, specifically during pretrial supervision.

19 I think many factors support that a 60-month  
20 sentence is appropriate in this case. First of all,  
21 Mr. Benoit was incredibly cooperative with the  
22 investigation. He insisted -- assisted in his own  
23 prosecution by making admissions and telling police  
24 where certain items could be found on those devices and  
25 sat down for a full interview.

1           He has been compliant with federal supervision  
2 and the conditions of this Court.

3           Again, as the Court has already mentioned,  
4 Dr. Guidry has suggested that his risk for sexual  
5 reoffense of an online sexual offense should be  
6 considered elevated if untreated, but manageable if his  
7 psychological vulnerabilities are adequately addressed  
8 in treatment. So in the context of appropriate  
9 treatment, his prognosis is positive, she explains.

10           He has a supportive family. His family has  
11 continued their support knowing of this offense and what  
12 the outcome is going to be, which is clearly  
13 incarceration.

14           But I think it's important for the Court to  
15 understand that this conduct does not appear to have  
16 been motivated by pedophilia, but motivated by premature  
17 exposure to pornography that was pierced with  
18 prepubertal sexual acting out.

19           As I discussed in my sentencing memo, your  
20 Honor, there is a widespread agreement among judges and  
21 courts that the guidelines for child pornography are  
22 seriously flawed. The sentencing enhancements produce a  
23 sentence approaching the statutory maximum based solely  
24 on characteristics that are all but inherent to a  
25 crime's conviction and that approach is fundamentally

1 inconsistent with 18 U.S.C. 3553.

2 Most important -- I think the most important  
3 issue other than the appropriate punishment and  
4 deterrence is whether Mr. Benoit is amenable to  
5 treatment so that this does not occur again and he does  
6 not reoffend.

7 Dr. Guidry concluded that Mr. Benoit's  
8 prognosis is positive and she wrote, quote: His  
9 responses suggest an acknowledgment of important  
10 problems and the perception of a need for help in  
11 dealing with these problems. He reports a positive  
12 attitude towards the possibility of personal change, the  
13 value of therapy, and the importance of personal  
14 responsibility.

15 In addition, she reports a number of other  
16 strengths that are positive indications for a relatively  
17 smooth treatment process and reasonably good prognosis.

18 While some incarceration obviously is  
19 warranted and he has a mandatory minimum sentence, your  
20 Honor, I believe that there is nothing in Mr. Benoit's  
21 history or characteristics which should suggest that a  
22 lengthy sentence is necessary or appropriate to achieve  
23 the goals of sentencing.

24 I think the best way to determine what his  
25 success will be is looking at how he has done while on

1 pretrial supervision, and he has complied with those  
2 conditions.

3 I know my client would like to address the  
4 Court and also his mother's here to address the Court as  
5 well.

6 Would the Court like me to proceed with my  
7 objections regarding the supervised release conditions  
8 at this point?

9 THE COURT: Yes.

10 MS. GRAHAM: Thank you.

11 I would ask the Court to review *U.S. vs.*  
12 *Pabon*, 819 Federal 3d 26 at 31, which is a 2016 case.  
13 And there the Court said that similar to sex offender  
14 treatment conditions, associational conditions may be  
15 proper where the defense, one, has -- where the  
16 defendant, rather, has recently committed a sexual  
17 offense against a minor; or where the intervening time  
18 between a prior sex offense and the present conviction  
19 is marked by substantial criminal activity; or where the  
20 defendant's conduct otherwise indicates an enhanced risk  
21 to minors.

22 And I would suggest that those factors do not  
23 exist in this case and, therefore, the conditions are  
24 not reasonable or based in fact.

25 Regarding the restriction outlined in

1 condition number 1, which would restrict his contact  
2 with his own children and also contact with other  
3 children, my client has a -- one child, a four-year-old,  
4 who's in the custody of his mother, but Mr. Benoit is 28  
5 years old and he may in the future get married and have  
6 more children. To say that he cannot have any contact  
7 with children without permission from probation is not  
8 reasonably related to this offense and imposes a greater  
9 deprivation of liberty than is necessary. It would  
10 potentially interfere with his ability and right to  
11 raise his own children.

12           Again, I say that this is not reasonably  
13 related because this is not a hands-on offense and  
14 there's no evidence that Benoit abused his child or that  
15 he poses a threat to his own child or future children.  
16 In fact, the stepchild that was in the home was  
17 interviewed by a child advocacy center and they  
18 concluded that that child had not been subjected to any  
19 assault or inappropriate behavior.

20           By allowing probation to decide whether to  
21 permit contact between a parent and a child may seem  
22 reasonable as a middle ground, but I think that, A,  
23 there has to be some justification for imposing such a  
24 condition and it also places a tremendous amount of  
25 power in the probation officer's hands to determine

1 whether my client would have and should have contact  
2 with his own children.

3 A restriction of any contact with anyone under  
4 the age of 18 is highly restrictive and I would ask the  
5 Court to amend that condition by allowing contact if  
6 supervised by an adult who is aware of his conviction  
7 and his status. Why that's restrictive is because  
8 basically that would prevent my client from maybe  
9 attending any family event where children may be. If  
10 there is some supervision by an adult who's aware of his  
11 conviction and status, then that would allow him to  
12 share and to enjoy family and family events.

13 THE COURT: But, you know, we're at the point  
14 where he hasn't undergone any treatment of any kind.

15 MS. GRAHAM: I -- yes, and --

16 THE COURT: And so there's a -- there's a  
17 risk, just based on the -- on the facts of this case.  
18 And this is a condition that's not cast in concrete. It  
19 can be adapted and modified as time goes on based on --  
20 on what develops in terms of his -- of his treatment and  
21 his engaging in the appropriate programs.

22 MS. GRAHAM: I understand, your Honor.

23 I think the -- the other restriction was the  
24 total ban on going to parks, museums, or libraries.  
25 Well, I don't think that probation specifically says

1 libraries, but I'm using a library as an example of not  
2 being allowed to go to a public place where children may  
3 be, because they're at the library reading books, really  
4 infringes on my client's ability to have freedom of  
5 movement and freedom to enjoy public spaces.

6 THE COURT: As I understand it, counsel would  
7 not disagree with adding a phrase to that requirement,  
8 "without prior permission of the probation officer"?

9 MS. FITZGIBBON: That's correct, your Honor.  
10 I would have no objection to adding that.

11 THE COURT: So any -- and, again, just so  
12 you -- we're looking a number of years away --

13 MS. GRAHAM: Yes.

14 THE COURT: -- and the need for treatment and  
15 we have to have some assessment as to how he's  
16 responding to that treatment before we simply allow him  
17 to go to parks and schools and playgrounds.

18 MS. GRAHAM: I guess, your Honor, I just want  
19 to distinguish the -- Dr. Guidry's evaluation as to  
20 contact offenses versus his -- his risk of reoffending  
21 online. And I think that there is no evidence, at least  
22 before the Court, I think, that he is inclined to engage  
23 in any kind of sexual hands-on offense. And I just  
24 wanted to clarify that for the -- my position.

25 THE COURT: All right.

1 MS. GRAHAM: I think the final request, your  
2 Honor, is to allow my client to use a computer and to  
3 redefine the language proposed by probation.

4 We would ask that the Court allow him to use  
5 the -- to use the Internet and computers for -- to  
6 access the Internet so long as it was not for any images  
7 or material as defined at 18 U.S.C. 2256.

8 In this day and age, most people get their  
9 news online; they can take classes online; they do job  
10 searches. And I understand that the provision would  
11 allow for permission by probation, but I think that  
12 that's very restrictive and highly burdensome. And if  
13 the language could be switched to say he can have access  
14 so long as it's not for unlawful or illegal purposes or  
15 as defined in 18 U.S.C. 2256, that would alleviate any  
16 concern that my client would be engaging in any online  
17 activity that's not prohibited -- that's not  
18 permissible.

19 THE COURT: What's the government's response  
20 to that?

21 MS. FITZGIBBON: The government would object  
22 to that, your Honor. Of all conditions, it would seem  
23 the restriction on Internet is appropriate in this case,  
24 given the fact that the defendant's offense of  
25 conviction is Internet-related and he used the Internet



1 to -- to gather so much illegal contraband.

2 Secondly, your Honor, as you've said, when the  
3 defendant goes through sex offender treatment, there's  
4 going to be all sorts of things that he's most likely  
5 not allowed to access on the Internet, not just illegal  
6 things, not just things in 2256, but, for instance,  
7 gaming, chat rooms. There are legal sites that have  
8 photos of children that while not sexually explicit are  
9 arousing to a person in sex offender treatment and I'm  
10 sure the counselors would not want him in those.

11 So, again, your Honor, there will be software  
12 to ensure that he's not engaged in illegal activity, but  
13 there will also be -- not just illegal stuff; there will  
14 be, I'm sure, Internet activities that citizens are  
15 allowed to participate in that under his supervised  
16 release and with his counseling will not -- he will be  
17 prohibited from.

18 So, again, I think it's very important that  
19 the probation officer is the one to sit with him -- and  
20 of course Internet will have to be used for job searches  
21 and news and that sort of thing, but it is the U.S.  
22 Probation Office that should be setting the parameters  
23 of what is permissible Internet use and then what is not  
24 permissible for him as a person under supervised release  
25 conditions.

1           THE COURT: The *Hinkel* case, Ms. Graham, that  
2   you quoted, and as you state in your memo, the Court  
3   noted that broad -- broad restrictions were upheld where  
4   the defendant used the Internet in the underlying  
5   offense. That's clearly the situation here.

6           Secondly, the defendant had a history of  
7   improperly using the Internet to engage in illegal  
8   conduct, clearly the situation here, over a period of  
9   five years of lengthy involvement.

10          And, three, particular and identifiable  
11   characteristics of the defendant suggested that such a  
12   restriction was warranted. The length of time, the  
13   nature of the images and videos that were assembled over  
14   the five years, clearly supports a restriction.

15          And, once again, as he engages in sexual  
16   offender treatment, he will be guided by -- by the  
17   counselors as to what he can and cannot do when it comes  
18   to the Internet, but certainly at this point in time,  
19   there's -- there's sufficient justification for that --  
20   that restriction. And it's not -- it's not an absolute  
21   prohibition. It's simply requiring appropriate  
22   oversight prior to his engaging in Internet use.

23          MS. GRAHAM: Understood, your Honor.

24          THE COURT: All right.

25          MS. GRAHAM: I really don't want to leave the

1 argument having, you know, teased out very minute  
2 details because I think that that might benefit my  
3 client in the sense that I -- I really would leave my  
4 presentation -- would like to leave my presentation with  
5 the Court understanding that my client has been  
6 compliant; that he has been cooperative; that he has  
7 been remorseful. And I think that the evaluation taken  
8 as a whole really emphasizes that my client is in a  
9 position to be successful on supervised release if he  
10 follows the treatment that will be provided to him.

11 THE COURT: The -- as we know, using the  
12 number of images to make an adjustment under the  
13 guidelines has been a very controversial issue with  
14 courts. The courts have been concerned about -- about  
15 how that is used and how it skews the guideline.

16 The other issue is in terms of the number of  
17 images that were traded, do you agree -- does the  
18 government agree it was a small number overall,  
19 relatively speaking, with --

20 MS. FITZGIBBON: That we know of, your Honor.

21 THE COURT: Yeah.

22 MS. FITZGIBBON: Because the undercover was  
23 the one who was receiving it and then stopped. But the  
24 extent to which it went to other people is still  
25 unclear. We know of some.

1 THE COURT: Because, I mean, that resulted in  
2 a five-level enhancement, which is --

3 MS. FITZGIBBON: Uh-huh. Yes, your Honor.

4 THE COURT: -- a significant enhancement, but  
5 it appears from what I read here that -- that the -- the  
6 number of images was -- what, was about 50, as I  
7 recall --

8 MS. GRAHAM: I believe the evidence --

9 THE COURT: -- was it?

10 MS. GRAHAM: -- that was provided in  
11 discovery, which included my client's statement, was  
12 that he believed either traded 50 or 100. It was in  
13 that --

14 THE COURT: Yeah.

15 MS. GRAHAM: -- that amount.

16 THE COURT: So those are factors that can be  
17 weighed in determining whether a variance is justified.

18 MS. GRAHAM: Yes, your Honor.

19 And I would just -- I don't think I need to  
20 restate the -- the further arguments made in my  
21 sentencing memorandum, but specifically just that nearly  
22 every child pornography case like this that comes before  
23 the Court is going to be at the maximum end and that  
24 just seems not to support, really, the goals of  
25 sentencing.

1           My client has -- he's in class I, Criminal  
2 History I, and I think that that's important as well to  
3 emphasize to the Court.

4           If I could now ask my client's mother to come  
5 up and address the Court.

6           THE COURT: Yes.

7           Good morning, Ms. Benoit.

8           MRS. BENOIT: Good morning, your Honor.

9           My name's Heather Benoit. I am Zachary's  
10 mother and I am here and have been with him in support  
11 and ask for some leniency and the minimum sentencing for  
12 the crimes that he has pled guilty to.

13           I am not in any way trying to minimize what he  
14 has done. I am well aware that he should and does have  
15 consequences that he must face for his actions.

16           Up until his arrest in 2017, I have never  
17 known him -- never had any problems as far as any  
18 serious trouble, getting in trouble for anything other  
19 than some traffic tickets. Other than that, he's always  
20 been responsible. He's always been a hard worker and  
21 helped around -- before he was old enough to actually  
22 have a job -- helped at his great uncle's auto garage  
23 when he was about 12 years old to start earning pocket  
24 money.

25           When he was 15, I was diagnosed with breast

1 cancer. During that time, my husband was on the road as  
2 a truck driver and Zachary took care of his younger  
3 brother, who was eight at the time, the house, myself,  
4 and also worked part time. I could not have ever gotten  
5 through any of that without him and without everything  
6 that he had done.

7 I want to assure the Court that Zachary  
8 has his father's and my full support during his  
9 incarceration as well as other family and friends. And  
10 afterward we are fully prepared to have him live with  
11 us, which he has been doing since his arrest, and we  
12 will encourage and stand by him as he does all that he  
13 can to make amends for his actions. I wholeheartedly  
14 believe that Zachary is more than willing to do all that  
15 he is capable of in order to reform.

16 Thank you for your time.

17 THE COURT: Thank you, Ms. Benoit.

18 MS. GRAHAM: Your Honor, my client --

19 THE COURT: Mr. Benoit, yes.

20 THE DEFENDANT: Your Honor, I am deeply  
21 regretful and ashamed of my actions that have led me to  
22 this day. Not only am I sorry for my behavior, but for  
23 the harm that I have caused to all that have been  
24 affected by my crime. By my actions I have caused harm  
25 to all the victims by allowing these videos to continue

1 to circulate by my hand, which they did not deserve.

2 In all other aspects of my life, I have tried  
3 to do my best and be a considerate and respectful  
4 person. I know that I have disappointed my family,  
5 friends, myself -- and myself by making these offensive  
6 choices and want to better myself by receiving --  
7 receiving counseling and furthering my education while  
8 incarcerated, after -- after my eventual release.

9 My goal is to earn back the trust of my family  
10 and my friends, society, by working hard and never  
11 repeating the actions that led me here today.

12 Thank you.

13 THE COURT: Thank you.

14 Am I correct that counsel has agreed on the  
15 restitution amount?

16 MS. FITZGIBBON: Yes, your Honor. Continuing  
17 right up until yesterday, both Attorney Graham and  
18 myself were talking to the victims' attorneys and  
19 Attorney Graham has entered into agreements of what  
20 would be acceptable and I would ask the Court to also  
21 adopt that and order the restitution. I believe she's  
22 entered into agreements for \$1,000 for each victim and  
23 there are a total of nine victims.

24 MS. GRAHAM: That's my understanding.

25 THE COURT: Five, six, seven?

1 MS. GRAHAM: There's only seven that's listed  
2 in the PSR because we had not yet heard back from the  
3 attorney on one of the -- or -- the attorney who  
4 represented two other victims. It would be a total of  
5 nine.

6 THE COURT: All right. And what are their  
7 names?

8 MS. FITZGIBBON: So, your Honor, one involves  
9 three victims in a series, so I can give you the -- the  
10 series name was Sweet Sugar. Those victims are Pia,  
11 P-i-a, Ava, and Mya, M-y-a.

12 THE COURT: Well, those are already listed  
13 here.

14 MS. FITZGIBBON: Oh, I'm sorry.

15 MS. GRAHAM: Those are not -- I'm sorry. If I  
16 could just have a moment.

17 MS. FITZGIBBON: If we could set that one  
18 aside for a minute, your Honor. I know I have the other  
19 ones.

20 There is one called Tara, T-a-r-a.

21 THE COURT: That's already here.

22 MS. FITZGIBBON: Right.

23 MS. GRAHAM: There's Maureen, who's in the  
24 Lighthouse series.

25 MS. FITZGIBBON: Uh-huh.



1 MS. GRAHAM: And Sarah, who's in the  
2 Marineland series.

3 THE COURT: What was that name? That isn't --  
4 Sarah?

5 MS. GRAHAM: So the first one, your Honor,  
6 is -- Maureen's already included.

7 MS. FITZGIBBON: Okay.

8 MS. GRAHAM: Sarah, who is in the Marineland 1  
9 series -- so Marine, M-a-r-i-n-e, land -- and Lily, who  
10 is in the Vickie series.

11 THE COURT: All right. And the Court has  
12 already approved the order of forfeiture which is  
13 pursuant to the joint motion filed by counsel.

14 MS. FITZGIBBON: Thank you, your Honor.

15 THE COURT: With respect to the objections to  
16 the supervised release conditions, the Court has  
17 considered that they are appropriate because they --  
18 they are reasonably related to the Section 3553(a)  
19 factors; they do not involve any greater deprivation of  
20 liberty than is necessary; and they're consistent with  
21 the policy statements issued by the Sentencing  
22 Commission under the facts of this case, which the Court  
23 has already reviewed during its discussion with counsel.

24 The Court will -- with respect to  
25 recommendation number 6, the Court will add the phrase

1 "without prior permission of the probation officer."  
2 You must not go to or remain at any place where you know  
3 children under the age of 18 are likely to be, including  
4 parks, schools, playgrounds, and child care facilities,  
5 without prior permission of the probation officer.

6 Mr. Benoit, please stand. The Court will read  
7 the sentence and if either counsel has a legal  
8 objection, you can tell me what that is when I'm  
9 finished.

10 Pursuant to the Sentencing Reform Act of 1984,  
11 it is the judgment of the Court that the defendant,  
12 Zachary Benoit, is hereby committed to the custody of  
13 the Bureau of Prisons to be imprisoned for a term of 156  
14 months.

15 The Court recommends that the defendant be  
16 assigned to an appropriate sex offender treatment  
17 program while incarcerated.

18 Upon release from imprisonment, the defendant  
19 shall be placed on supervised release for a term of five  
20 years. Within 72 hours of release from the custody of  
21 the Bureau of Prisons, the defendant shall report in  
22 person to the probation office in the district to which  
23 he is released.

24 While under supervision, he shall comply with  
25 the standard conditions that have been adopted by this

1 Court and shall comply with the mandatory and proposed  
2 special conditions attached to the presentence report as  
3 amended by the Court.

4 The Court finds that the defendant does not  
5 have the ability to pay a fine and waives the fine in  
6 this case.

7 The Court finds that the following victims  
8 have suffered injuries compensable under the Victim and  
9 Witness Protection Act, Mandatory Restitution Act,  
10 Violence Against Women Act, Crime Victims' Rights Act,  
11 in the amounts indicated: Jenny, \$1,000; Jessica,  
12 \$1,000; Pia, \$1,000; Ava, \$1,000; Mya, \$1,000; Maureen,  
13 \$1,000; Tara, \$1,000; Sarah, \$1,000; Lily, \$1,000. Any  
14 payment that is not paid in full shall be divided  
15 proportionally among the persons named.

16 Payments toward the criminal monetary  
17 penalties are ordered to begin immediately. Within 30  
18 days of commencement of supervision, payments shall be  
19 made in equal monthly installments of \$100 during the  
20 period of supervision and thereafter.

21 Upon commencement of supervision, the  
22 probation officer shall review the defendant's financial  
23 circumstances and, if necessary, recommend a revised  
24 payment schedule on any outstanding balance for approval  
25 by the Court.

1           It is ordered that the defendant shall pay to  
2     the United States a special assessment of \$200, due in  
3     full immediately.

4           The Court finds that the defendant does not  
5     have the ability to pay the Justice for Victims of  
6     Trafficking Act assessment.

7           The order of forfeiture that has been entered  
8     shall be made part of the sentence in this case and  
9     included in the judgment.

10          The defendant is remanded to the custody of  
11     the United States Marshal.

12          Does the government have any legal objection  
13     to this sentence?

14          MS. FITZGIBBON: No legal objections, your  
15     Honor, but if I could just ask -- sometimes the names of  
16     series and victims get a little confused --

17          THE COURT: Yeah.

18          MS. FITZGIBBON: -- and when I talked to  
19     Attorney Hepburn, Lily and Vickie might be interchanged.  
20     If I could just ask the Court to after Lily put Vickie  
21     Series, because that is the agreement that we were  
22     talking about. So --

23          THE COURT: So instead of Lily, put Vickie  
24     Series?

25          MS. FITZGIBBON: Yes, your Honor. That's who

1 Attorney Hepburn represents and I spoke with --

2 THE COURT: Do you agree with that,  
3 Ms. Graham?

4 MS. GRAHAM: That's fine.

5 THE COURT: Is that satisfactory?

6 It's my obligation to inform you, Mr. Benoit,  
7 that to the extent that there are any issues that can be  
8 appealed, you do have the right to appeal this sentence  
9 to the First Circuit Court of Appeals in Boston. That  
10 appeal must be taken within ten days of when judgment is  
11 entered and if you cannot afford the costs of an appeal  
12 or an attorney on appeal, then those will be provided  
13 for you.

14 In imposing this sentence, the Court has  
15 considered the government's recommendation of 168 months  
16 and the defendant's recommendation of 60 months. The  
17 Court has considered the advisory guideline range and  
18 the statutory factors and has imposed this sentence for  
19 the following reasons:

20 One, transportation and possession of child  
21 pornography are serious offenses which involve the  
22 victimization and revictimization of children.  
23 Therefore, an appropriate period of incarceration is  
24 necessary, taking into account the particular facts of  
25 this case.

1           Two, some of the material in this case  
2 involved very young children and extremely sadistic  
3 conduct, both of which are aggravating factors.

4           Three, using the number of images to make an  
5 adjustment in the guidelines has been found by many  
6 courts to be problematic. The files which were traded  
7 and which resulted in a five-level enhancement in this  
8 case represent a small percentage of all of the images  
9 found on the defendant's computer. The Court has taken  
10 these two factors into consideration in determining a  
11 reasonable variance.

12           Four, the defendant has been engaged in this  
13 conduct for approximately five years. He became fixated  
14 on child pornography; however, there's no indication  
15 that during this time he had any contact sexual offense.

16           Five, the defendant was sexually abused as a  
17 child and he sexually abused his sister.

18           He has no prior criminal record, has had a  
19 good work history, has a substance abuse history that is  
20 mainly comprised of marijuana use, and he has been  
21 diagnosed with dysthymic disorder.

22           He has cooperated with law enforcement from  
23 the beginning of the investigation. He has been  
24 compliant with conditions of his release and he has  
25 strong family support.

1           Five, the defendant underwent a psychosexual  
2     evaluation performed by Dr. Laurie Guidry. Dr. Guidry  
3     concluded that the defendant is currently best  
4     understood as presenting a relatively low risk of  
5     recidivating with a contact offense as he does not  
6     present the factors consistent with those that would  
7     indicate he represents an elevated risk to commit a  
8     contact offense. The doctor further concluded that the  
9     defendant's risk of sexual reoffense by virtue of  
10    committing an online sexual offense should be considered  
11    elevated if untreated, but manageable if his  
12    psychological vulnerabilities are adequately addressed  
13    in treatment.

14           Dr. Guidry found that the defendant does not  
15    present with an antisocial personality disorder. She  
16    recommends treatment and the Court has recommended  
17    treatment.

18           Restitution is required and the Court has  
19    accepted counsel's recommendations with respect to  
20    restitution.

21           And, lastly, the sentence imposed is  
22    sufficient, but not more than necessary, to punish the  
23    defendant for this offense, to deter him and others from  
24    committing similar offenses, to promote respect for the  
25    law, to promote -- to protect society, and to take into

1 account the defendant's individual characteristics.

2 Are there any other issues that counsel would  
3 like to take up?

4 MS. FITZGIBBON: No, thank you. Your Honor.

5 MS. GRAHAM: May I have one moment, your  
6 Honor?

7 THE COURT: Yes.

8 MS. GRAHAM: Your Honor, the one request I  
9 have is for the Court to make a recommendation to the  
10 Bureau of Prisons to place him at a facility closest to  
11 New Hampshire, where his family support is.

12 THE COURT: All right. The Court will add  
13 that recommendation to the -- the Court recommends to  
14 the Bureau of Prisons that the defendant be assigned to  
15 a facility either in New Hampshire or as close to  
16 New Hampshire as possible so that he can be close to his  
17 family.

18 MS. GRAHAM: Thank you.

19 THE PROBATION OFFICER: Your Honor, the  
20 probation officer would like to modify paragraph 65 to  
21 change the offense level as well as the --

22 THE COURT: I can't hear you. Would you  
23 please speak up?

24 THE PROBATION OFFICER: I'd like to change  
25 paragraph 65 to change the total offense level to 35 and



1 also the guideline imprisonment range, which would go  
2 with the other paragraphs earlier.

3 THE COURT: Yes. Well, I indicated earlier  
4 that the -- you were to make changes in the report  
5 consistent with the Court's finding.

6 THE PROBATION OFFICER: Thank you, your Honor.

7 THE COURT: Yes.

8 We are waiting for the marshal.

9 The defendant has been remanded to the custody  
10 of the United States Marshal.

11 Court will be in recess.

12 (Proceedings concluded at 11:57 a.m.)  
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C E R T I F I C A T E

I, Liza W. Dubois, do hereby certify that  
the foregoing transcript is a true and accurate  
transcription of the within proceedings, to the best of  
my knowledge, skill, ability and belief.

Submitted: 5/22/19

Liza W. Dubois  
Liza Dubois, RMR, CRR  
Licensed Court Reporter No. 104  
State of New Hampshire